

Dated: January 13, 1999

Case No.: 1998-ERA-25

IN THE MATTER OF:

John J. Degostin, Jr.
Complainant

v.

Northeast Utilities

and

Bartlett Nuclear, Inc.
Respondents

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND DISMISSING COMPLAINT WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. §5851, and its implementing regulations found at 29 C.F.R. Part 24. The undersigned is in receipt of a Joint Motion for a Recommended Decision and a Final Order Approving Settlement Agreement and Dismissing the Complaint With Prejudice. Attached to that Joint Motion is a Confidential Settlement Agreement and a Release and signed by all parties of record.

The regulation cited above does not contain any provision relating to a dismissal of a complaint by a voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at Part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c). Once agreement has been reached by the parties, the regulation permits the parties to “[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action.” 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge is then directed by Part 18.9(d), which states in pertinent part:

Disposition. In the event an agreement. . . is submitted. . . , the administrative law judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

For the reasons set forth in **Poulos v. Ambassador Fuel Oil Co., Inc.**, Case No. 86-CAA-1, (Sec’y 11/2/87), I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant’s allegation that Respondents violated the ERA.

Upon careful review, this Judge has reached the determination that the Settlement Agreement and General Release fully comport with precedent established by the Secretary and/or Administrative Review Board.

This Judge notes the parties have designated the Settlement Agreement and General Release as confidential commercial information, as defined at 29 C.F.R. Part 70.26, and thereby attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552. In this vain, the parties request this Judge issue a finding that the Settlement Agreement and General Release constitute confidential commercial and financial information.

FOIA, however, *requires* agencies to disclose requested documents unless they are exempt from disclosure. See **Klock v. Tennessee Valley Auth.**, 95-ERA-20 (ARB 5/30/96), at p. 2; **Darr v. Precise Hard Chrome**, 95-CAA-6 (Sec’y 5/9/95), at p. 2; **Webb v. Consolidated Edison Co.**, 93-CAA-5 (Sec’y 11/3/93) at p. 2. Since no FOIA request has been made, “it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding.” **Darr, supra**, at pp. 2-3 See Also **DeBose v. Carolina Power and Light Co.**, 92-ERA-14 (Sec’y 2/7/94), at p. 3. The appropriate procedure for a FOIA request may be found at 29 C.F.R. Part 70.26.¹ See **Generally Biddy v. Alyeska Pipeline Service Co.**, 95-TSC-7 (ARB 12/3/96), at n. 1.

Accordingly, it is hereby **RECOMMENDED** that the Settlement Agreement and General Release between Complainant, John J. Degostin, Jr., and Respondents, Northeast Utilities and Bartlett Nuclear, Inc., be **APPROVED** and that the matter be **DISMISSED WITH PREJUDICE**.

¹I will note for the record that Respondents have submitted the necessary affidavits, as is preferred by 29 C.F.R. Part 70.26(b), from corporate representatives.

It is **FURTHER RECOMMENDED** that the Settlement Agreement and General Release be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.26.

DAVID W. DI NARDI
Administrative Law Judge

Boston, Massachusetts
DWD:jd

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order and shall be served on all parties and on the Chief Administrative Law Judge. See 23 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed.Reg. 6614 (1998).